Nu-Line Industries, Inc. *and* Drivers, Warehouse & Dairy Employees Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO. Case 30–CA–10880

March 7, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 16, 1990, Administrative Law Judge Joel A. Harmatz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Nu-Line Industries, Inc., Suring, Wisconsin, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Paul Bosanac, Esq., for the General Counsel.
Gregory B. Gill, Esq. and *Bruce N. Evers, Esq. (Gill & Gill, S.C.)*, of Appleton, Wisconsin, for the Respondent.
Frederick Perillo, Esq. (Previant, Goldberg, Ulmen), of Milwaukee, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This case was tried in Shawano, Wisconsin, on August 21 and 22, 1990, on an initial unfair labor practice charge filed on April 10, 1990, and a complaint issued on May 25, 1990, which, as amended, alleges that the Respondent independently violated Section 8(a)(1) of the Act by coercively interrogating employees concerning union activity; by declaring that it would not negotiate in good faith if the Union were designated: by threatening to discharge employees if the Union organized the plant; by engaging in surveillance and creating the impression that union activity was subject to surveillance; and by separating employees to prevent them from engaging in union activity. The complaint further alleges that the Respondent violated Section 8(a)(3) and (1) of the Act by on April 9, 1990, reducing the piece rates of employees Marilyn Baumgardt and Barbara Talley because of their union activity. In its duly filed answer, the Respondent denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel and the Respondent.

On the entire record, including my opportunity directly to observe the witnesses and their demeanor, and after considering the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent manufactures children's furniture at its place of business in Suring, Wisconsin. During the calendar year ending December 31, 1989, in the course and conduct of said operation, the Respondent sold and shipped products valued in excess of $50,000 directly to points located outside the State of Wisconsin. The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Drivers, Warehousemen & Dairy Employees Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO[1] (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Preliminary Statement*

There is no history of collective bargaining for the 260 production and maintenance workers employed at the Respondent's furniture plant in Suring, Wisconsin. The Union began organizing these workers in January 1990.[2] The General Counsel contends that this effort was countered by a campaign of intimidation and discrimination. Thus, the Respondent is charged with a variety of independent 8(a)(1) violations, as well as an 8(a)(3) and (1) violation based on reduction of an incentive rate. The Respondent adduced testimony in refutation of the alleged 8(a)(1) violations, and argues that the rate was adjusted on the basis of independent business considerations, having no relationship to employee organizational interests.

B. *Interference, Restraint, and Coercion*

1. The cafeteria incident

The complaint imputes 8(a)(1) conduct to a pair of management representatives the same day as the Union's initial organization meeting in mid-January.

First, it is alleged that Raymond Heimerl, the general manager of the Suring plant, interrogated employees and told them that there would be no good-faith bargaining even were they to designate the Union. In support, Ann Ohlrich, a

[1] By order of the Acting Regional Director for Region 30 dated June 4, 1990, this proceeding was consolidated for hearing and decision with Cases 30–CA–10803 and 30–CA–10803–1. These cases have been deleted from the above caption because, during the hearing, the issues presented therein were resolved amicably. Although, technically, the adjusted cases remain a part of this proceeding, this status is merely provisional, for they will be severed and dismissed when compliance is achieved. Accordingly, to avoid confusion, the above-caption is framed so as to embrace only the complaint and issues that remain unresolved and presently in controversy.

[2] Unless otherwise indicated, all dates refer to 1990.

housekeeping employee, testified that on the morning in question, as she was performing her duties in the cafeteria, she overheard Heimerl ask employees Steve Fifield, Gary Strehlow, and Tim Clark whether they would attend the union meeting that had been scheduled for that evening, and what their feelings were. She relates that Clark replied that it would be a good idea to learn what the Union had to offer.[3] According to Ohlrich, Strehlow and Fifield expressed a firm disinterest, mentioning the shutdown of a nearby Nicolet Paper plant, while voicing the opinion that the Union meant nothing but strikes and dues. Ohlrich further offered that Heimerl then reinforced this view by making the point that:

> [I]f we would ever go on strike, if the union got in, they could fire everybody and hire Coleman Product employees. [T]hey never would have to negotiate a contract with the union negotiators. That they could just automatically say no.[4]

Finally, Ohlrich testified that Heimerl disparaged the Union, associating it with the mafia, while stating that ''they weren't a very nice bunch of guys.''

Heimerl denied questioning anyone as to their intent concerning the union meeting. He also denied reference to the mafia. Finally, he denied stating that he did not have to bargain with the Union or that if the Teamsters got in, he would put them on strike and hire Coleman Products employees. Under his version, on the morning in question, as he was walking from the restroom, Strehlow and Fifield, who were in the lunchroom, beckoned him to their table. Heimerl was told that the union meeting was scheduled for that evening, and the employees wanted to know what type questions they should ask while attending. Heimerl responded that he had no idea, stating, ''It is up to you.'' When they inquired as to whether they should attend, he indicated that it was up to them, and if they wished to go, to do so. He admits that he noticed Ohlrich cleaning as he talked to the men, adding that when they left, Ohlrich volunteered that she had no use for unions, explaining that her uncle had ''lost his pension and everything else.''

Heimerl's account was confirmed basically by Strehlow and Fifield. Both acknowledged that Ohlrich was in the lunchroom at the time. Strehlow testified that he called Heimerl and asked if he had any statistics on the Union because he knew little about it. Heimerl said that he should just go to the meeting as he did not care if Strehlow did so or not. He heard no mention of collective bargaining or a contract, and did not recall anyone linking the Teamsters with the mafia. Steve Fifield confirmed that he and Strehlow had several questions about unions, so they approached Heimerl. The latter suggested that if they had questions they should go to the union meeting and get the Union's opinion. He denied hearing threats or promises, and did not question them concerning their interests in the Union or the meeting. Fifield heard nothing about a union contract.

In addition to the misconduct imputed to Heimerl, the complaint alleges that the Respondent violated Section 8(a)(1) through Heinz Kiesling's discharge threat. The latter had been the Respondent's yard supervisor for some 19 years. According to Ohlrich, at the end of the above discussion of the union meeting, Kiesling approached the group, stating that he had seen the announcement of the union meeting, adding, ''I hope you are not voting for the union, because . . . all they have to do is close the plant or hire Coleman Product employees.''[5] Kiesling denied having made any such statement.

The allegations implicating both Heimerl and Kiesling are based on Ohlrich's uncorroborated testimony. Although the Respondent's evidence is not in perfect synch, I was distinctly unimpressed with Ohlrich, and my doubt as to her reliability is sufficiently deep to impel rejection of her testimony where unconfirmed by strong probability or independent, credible sources. Neither being present here, the 8(a)(1) allegations involving Heimerl and Kiesling are dismissed.

2. By Richard Genal

The complaint alleges that the Respondent violated Section 8(a)(1) on or about February 5, when Plant Engineer Genal created the impression that union activity was being observed.

Ohlrich, who claims to have been the employee responsible for contacting the Union, and who brandished a union button since the first union meeting in mid-January, testified that some time later, she, together with another cleaning lady, Kathy Creidle, were on break. They were addressed by Genal, their supervisor, who stated that he did not care what they did on their own time or breaks, but he did not want union activity discussed during working hours. Ohlrich asserted that Genal went on to state that an unidentified superior had told him ''that . . . [Ohlrich] had spent quite a deal of time [2-1/2 hours] in the lunchroom talking about union activity.''

Ohlrich admitted to a union-oriented conversation earlier that day in the lunchroom, as follows:

> I . . . took my 10-minute break with Kathy Hanson . . . an inventory clerk. . . . [S]he asked me if I could give her a union card, if I had one. And I handed it to her. At this time I noticed that Tom DeLeeuw and Chris Peterson were in Chris Peterson's office. . . . And he saw me. I know he saw me. He was staring right at me when I gave her the card.

She denied any prolonged conversation concerning the Union during working time.

In *California Dental Care*, 272 NLRB 1153, 1165 (1984), Judge Jerrold H. Shapiro stated: ''In determining whether an employer created the impression of surveillance the test applied by the Board is whether, under the circumstances, the employee would reasonably assume from the statement in question that the employee's union activities had been placed under surveillance.'' In contrast with that requirement, here, Ohlrich attributes Genal's intervention concerning her union activity to DeLeeuw, who was not her supervisor, and, who

[3] Clark did not testify. All except Ohlrich deny that they observed Clark in the lunchroom during the incident.

[4] Though the discharge threat that Ohlrich imputes to Heimerl is more serious than the other infractions attributed to him, it was not mentioned in the complaint.

[5] Strehlow and Fifield denied that Kiesling participated in any conversation that they witnessed. It is of course possible that they could have left prior to his arrival.

at the time presumably was engaged in company business. At least, there is no suggestion to the contrary. Ohlrich, an open supporter of the Union, admittedly was engaged in union activity in what, for her, was a work area. The Board has recognized that ''an employer's mere observation of open, public, union activity on or near its property does not constitute unlawful surveillance.'' *Key Food Stores*, 286 NLRB 1056 (1987). Neither DeLeeuw nor Peterson is charged with surveillance or any other impropriety. In the circumstances, even if Ohlrich's union activity in the lunchroom was confined to her break, she could not reasonably construe Genal's remark as suggesting that management operated on any proclivity to watch employees as a means of impeding union activity on nonworking time.[6] Accordingly, it is concluded that Genal did not create the impression that union activity was subject to any unprivileged form of managerial action, and the 8(a)(1) allegation in this respect shall be dismissed.

In addition to the foregoing, the complaint alleges that the Respondent violated Section 8(a)(1) on or about February 26, when Genal ordered employees to cease working together, thus attempting to isolate and prevent them from engaging in union activity.

This relates to Ohlrich's return from medical leave on February 26. That morning, Kathy Creidle, a part-time housekeeper, was also present. According to Ohlrich, Creidle told her that, ''she was going to be working with me that day just to make my day a little bit easier.'' Genal's intercession was explained by Ohlrich, as follows:

> Kathy Creidle and I were upstairs in the conference room on the mezzanine, and we were getting ready to clean it. . . . [Genal] . . . had come in there. . . . [A]t first he asked me how I was and I told him. . . . [H]e then explained to us that because of what was going on in the plant that we shouldn't be working together anymore. . . . [W]e should each stay at our own end of the shop. . . . [W]e really shouldn't be seen taking breaks together or anything like that because people were starting to talk. . . . [H]e didn't want us to get into any trouble. He didn't want anything to happen to us. . . . [H]e said if you just stayed at your end, and she stays on her end.

Genal admitted that, on this occasion, he told Ohlrich and Creidle to stop working together. He avers, however, that this directive conformed with normal procedures. Thus, typically, when these housekeepers worked overlapping hours, one was responsible for the north end of the plant, the other, the south end. There were two exceptions. The first was a training period, which began in November 1989, prompted by the need for substitute coverage because of Ohlrich's frequent absenteeism. Thus, Genal opted to have Creidle work with Ohlrich in order that Creidle learn Ohlrich's route, because during the latter's absences, Creidle would be asked to work full time, while required to work the entire plant. Genal also permitted them to work together on occasions when Ohlrich came off medical leave and was not fully recovered. He avers that when on February 26, Ohlrich returned to work, advising him that she was, ''Okay,'' he instructed Creidle to return to her ''normal route.''

Genal's explanation is at least partially verified by Ohlrich's own testimony that she and Creidle, when scheduled together, were responsible for separate sections of the plant.[7] I credit Genal. Considering my previously expressed doubt as to Ohlrich's reliability, it is concluded that Genal's action was consistent with established procedures and had nothing to do with union activity. The 8(a)(1) allegation in this respect shall be dismissed.

3. By Gary Tietyen, Karen Schneider, and Sam Reed

The complaint alleges that the Respondent violated Section 8(a)(1) on or about February 2 when the above management representatives engaged in surveillance of union activity and created the impression that such employee conduct was subject to surveillance. Tietyen is an admitted supervisor, and Schneider and Reed, both subforeman, were admitted by the pleadings to enjoy that status.

This allegation is based on the uncorroborated testimony of Yvon Moede. She claims that after her attendance at a union meeting, she received stepped up attention from supervision, sensing that from the first union meeting till late March, she was being followed, and along with coworkers was being watched. Tietyen, her supervisor, was allegedly the principal offender, while Schneider and Reed[8] were identified as having been observed spending excessive periods in the lunchroom. Tietyen, according to Moede, seemed always to be around when employees gathered, taking a position so close that he could hear what was being said. She mentions an occasion when she had a flyer announcing a high school band concert with personal belongings at her work station; Tietyen allegedly approached her, and glanced at the flyer.[9]

Moede furnished no foundation for any assumption that she would be an apt target for improper surveillance. She claims to have attended a union meeting, but neither identifies when it took place,[10] nor offers any testimony warranting an inference that management would have been suspected this, or any other union activity on her part. She acknowledged that supervisors watched employees prior to advent of the Union, but diminishes this history because they did so ''not that closely.''

Heimerl confirmed that, during the union campaign, he instructed supervisors to assure that employees were doing their jobs, an order that included closer scrutiny of employees in the plant. He justified this directive on a need in mid-February 1990, to increase productivity due to a radical increase in orders. In his words:

> The problem was, as we got busier, and as the union activity primarily picked up, we had some situations

[6] There is no material difference between Ohlrich's situation and that reckoned by the Board in *Page Avjet, Inc*., 278 NLRB 444, 451 (1986). There, an employee was told by his supervisor of a report received by the latter that the employee was soliciting cards during working time. The employee denied any solicitations, whatever. The Board, without addressing the accuracy of the report, declined to find an unlawful impression of surveillance, stressing that, as in the instant case, the employee was informed that the report related solely to worktime solicitation.

[7] Creidle did not testify, and their is no indication of her union sentiment or proclivity to discuss that issue.

[8] The official transcript misidentifies Reed as ''Wade.'' The error is corrected.

[9] Management, under settled authority, is entitled to police work stations in order to purge union literature from these areas. See, e.g., *La Marche Mfg. Co*., 238 NLRB 1470, 1481 (1978).

[10] Contrary to the General Counsel the record does not reveal that this was ''the first Union meeting.''

> throughout the whole company when people were getting into a position where it was such a thing on the floor, a discussion, that there was groups of people primarily on the floor talking all the time about what was going on. . . . Primarily production was sort of forgotten about in a sense. . . . The drive wasn't there. Too many people had their minds on . . . other things. So it was really one of the issues, and one of the reasons why today I feel strongly that I am still digging out, because I couldn't get the productivity that I needed at that point in time.
>
> . . . .
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> I had a meeting with the . . . supervisors. And what I expected the supervisors to do was, I said under no conditions do you harass anybody on the floor. However, keep in mind that we do have a production plan here that has to run. We have to supply our customers. We cannot allow the people to be standing in the hallway, standing in the lunch room, when they are suppose to be on their jobs working. What I want you to do, I want you to walk up to them and ask them please, would you go back to your job. And I don't want an argument. I just want you to politely do that. And from what I understand, that did work. In some cases it worked if they were just seen walking around by them, get them motivated back to their machines.

The Act does not intrude on management's right to monitor employees within the plant where necessary to maintain production and efficiency. Thus, as observed earlier, ''it does not constitute unlawful surveillance or creation of that impression for an employer to observe that which is plain to see while he is about his usual business or activities and without his having deliberately and obtrusively placed himself to spy over his employees' union activities . . . .'' *Well-Bred Loaf, Inc*., 280 NLRB 306, 310 (1986). In short, statutory policy does not necessarily demand that the overall supervisory function be relaxed during an organization campaign, where neither a tool of harassment, nor a pretextual device calculated to impede the exercise of protected rights.

In terms of proof responsibility, generally, it is the effect of management action, in the form of the tendency to impede Section 7 rights, rather than the employer's motive, that is determinative under Section 8(a)(1). However, where management of the workplace is involved, illegality is not established merely on realistic probability that employees hold to an honest, albeit subjective, belief that union activity was a factor.[11] To accommodate competing interests that are brought into play in the work environment, the monitoring of employees in that area is presumptively legitimate, sufficing alone, to meet the employer's initial burden. In these circumstances, an illustration of the General Counsel's burden appeared in *Southern Maryland Hospital*, 293 NLRB 1209 (1989), where the Board stated: ''As a general rule, management officials may observe public union activity, particularly where such activity occurs on company premises, without violating Section 8(a)(1) of the Act, unless such officials do something out of the ordinary.''

[11] It is virtually inevitable that an employee, after a rub with union activity, might be betrayed by a false sense that he, she, or coworkers are being watched for that reason.

Moede does not convince that this was the case here. Her uncorroborated testimony that she and others were watched closely and followed while on their breaks seemed exaggerated. In any event, it failed to furnish a persuasive vehicle for discounting Heimerl's credited testimony that stepped up monitoring of employee behavior during that period was based entirely on business exigency. In short, Moede's uncorroborated testimony was not regarded as a believable basis for finding that managerial action exceeded privileged limits or a departure from that which, in the circumstances, was normal and necessary. Accordingly, it is concluded, in this regard, that the Respondent neither engaged in any proscribed form of surveillance, nor created the impression thereof, under conditions violative of Section 8(a)(1).

C. *The Alleged Discriminatory Reduction in Piece Rates*

1. Positions of the parties

The complaint alleges that the Respondent violated Section 8(a)(3) and (1) on or about April 9 by reducing the piece rates of employees Marilyn Baumgardt and Barbara Talley because of their union activity. The Respondent denies that this was the case, arguing that it took this step as a corrective measure solely in response to an operational change that enabled Baumgardt and Talley to earn at disproportionately higher wages than other machine operators performing like work.

2. The rate change

At times material, Baumgardt and Talley operated one of six Richardson Chucking Machines (XA) machines. These units perform checking and boring operations in turning out a variety of components. All are located in the precut department. Baumgardt, on the second shift, and Talley, the first, operated the unit designated ''XA-2.'' They alone were permanently assigned to, and engaged almost entirely in, cutting dowels on the ends of slats, which later would be assembled into rails for juvenile cribs. In essential respects, their earnings, like operators of other XA machines, were based on a piece rate, incentive system.

The Respondent does not deny that it was aware that these employees had manifested prounion sentiment. Baumgardt and Talley, without contradiction, testified that in March, prior to the rate adjustment, they began wearing union buttons. They were the only operators in their department, on their respective shifts, to do so, and there is no evidence that others in any fashion had exhibited a prounion sentiment.

On Friday, April 6, Baumgardt and Talley were called to the office of Jeffrey Prange, the human resources manager. Plant Superintendent Al Johnson, DeLeeuw, and Tietyen were also present. At that time, the rates in effect for the slat operation were .0040 for those of 6 inches or less and .0039 for longer lengths. In the course of the meeting Johnson informed that Baumgardt and Talley were making too much money and that effective Monday, April 9, the rates would be cut to .0030 on all slats. Baumgardt argued that they were doing a good job, that quality was good, that they worked through breaks, while questioning why their rates would be

the only ones cut. Management explained that they were just making too much money.[12]

As matters turned out, Johnson's boss, Heimerl, was not totally enchanted with the new rate. Thus, on April 11, Baumgardt and Talley were called to Heimerl's office, and shown their time records which included earnings and output data. Heimerl requested that they review this data and asked that they come up with ''a better rate'' if they did not like what they were getting. However, before they could do so, Heimerl that afternoon canceled further consideration of the rate issue. He advised the operators that the Company had just received unfair labor practice charges concerning the rate reduction, and, ''He had to talk to his attorneys first,'' as he did not wish to appear to be involved in a ''bribe.''

On April 16, Heimerl reopened these discussions, again allowing Baumgardt and Talley to review the production/earnings sheets, asking them to study the data and propose an appropriate rate. Two days later, Heimerl asked Talley if they had arrived at anything. She admittedly replied:

> [A]fter looking into it, finding out what other people were making in the plant, average wages, after timing how fast other . . . XA operators were running parts and how much money they were making, I did specify a couple of them to him. Which . . . did calculate quite a bit higher than what we were making. I said that I thought the rate was very fair where it was before they cut it.

On April 20, Heimerl took it on himself to raise the rate to .0034 for all lengths. On that date, Talley and Baumgardt received a memo which also was posted for attention of all employees, and which stated as follows:

> In September of last year it was determined that the speed on XA machines could be increased without sacrificing the quality of slats being produced. Obviously if this proved to be correct it was estimated that production of slats could increase by as much as 1/4 the previous level.
>
> The result however showed that the levels of production attained were considerably higher than expected.
>
> The rate was then set at .0030 per piece. After further consideration, study and input from employees, it is felt that the rate should be set at .0034 per piece.[13]

The Respondent, in contending that the April adjustments had nothing to do with union activity, describes Baumgardt and Talley as having sustained an artificial increase in earnings following removal of locks on the XA-2 in September 1989. In support, it is argued that their incentive rates were subject to ongoing monitoring since that date, and that the determination was finally made in April 1990 following complaints by coworkers as to the disproportionately higher earnings of the slat operators.

[12] Talley testified, again without corroboration that she asked if the rates were being cut because of the Union, but there was no response. Johnson denied any mention of the Union in conjunction with the rate adjustment. Talley was not believed.

[13] This memo was dated April 10. Talley testified that, on inquiry, Tietyen, after checking with Heimerl, informed her that this document bore that date ''because it was typed previously.'' Talley was not a credible witness. My doubt that this document existed on April 10 is nothing short of total.

3. Employee anticipation and concerns regarding rate reduction

Baumgardt and Talley do not deny that prior to September 1989, as a quality assurance measure, locks were placed on the XA-2 to prevent the operators from effecting adjustments which would enhance the pace of the machine. They agree that removal of the locks at that time allowed operation at faster speeds and increased output.[14] This translated into greater earning opportunities.[15] For example, Baumgardt admitted that she made a lot more when the locks were removed, reaching almost $2 hourly more than other operators in her department, and substantially above the departmental average. She also admitted that Heimerl had told her that coworkers in the department were upset with that differential. Finally, she conceded that the downward adjustment in April came as no surprise.

Talley's accounting is another matter. If believed, her testimony would offer a simplifying boost to the claim of discrimination. She describes the April revision as a complete reversal of no-cut assurances articulated repeatedly and at various levels of management before her involvement with the Union. Secondly, unlike Baumgardt, Talley attempted to shift attention away from the heightened productivity of the XA-2, by attributing her increased earnings to hard work, including her practice of ''always'' shunning breaks to work through them.

Talley avers that prior to April 6, inspired by a coworker, she inquired of management as to a possible cut in rates beginning in early March. Talley explained that at that time she was running her machine at an inordinately fast pace when Jane Burhrandt, another operator, warned: ''You better slow down, he will cut the rates.'' Talley claims that for this reason she collared Plant Manager Johnson, who, according to Talley, stated that at that time there were no plans to cut the rates. She avers that, despite this alleged assurance, 2 days later, she sought to confer with Prange. She asked him if they would cut the rates because the machine was running faster. He allegedly replied:

> [N]o they don't do that anymore. They used to do that when Ken Stewart owned the company, before Huffy took over about almost three years ago. . . . He said that unless some of the job duties were taken away, enabling the person to put out more production and make up for it that way, make up for the pay, he said that that would be monitored to make sure that it balanced out.

In reference to the statement by Prange that rates aren't cut anymore, Talley claims to have made a comment, ''to the effect of good, because of the union—the union being around.''

[14] The locks were removed largely in consequence of pleas by Baumgardt, Talley and another operator, Jane Burhrandt that quality could be maintained, overtime diminished, and greater productivity achieved if this step were taken.

[15] Prior to September 1989, all six of the XA machines were subject to operation with locks. At that time, all locks were removed. This did not mitigate the advantage acquired by Baumgardt and Talley, in terms of earnings potential, as against other operators. Johnson credibly explained that, after September 1989, all other XA machines labored under design complexities, which required a continuation of output ceilings in order to preserve quality.

Talley's testimony was so unbelievable as to reenforce the Respondent's testimony that management at all times held open the possibility of an incentive cut. Her initial denial of personal concern for a potential cut bordered on the outrageous. In early March, she admittedly initiated separate discussions of this issue with the Respondent's production manager, its personnel director, and its general foreman.[16] Apparently, in her mind, one, two, or even three assurances were not enough. All this, not out of her personal interest, but as a gesture for a coworker, Burhrandt,[17] whose wage standards apparently were not even in jeopardy. My rejection of her testimony is not only enforced by common sense, but by her further testimony acknowledging her own personal concern:

> MR. GILL: You wanted guarantees from management in early March that your rate would not be cut, didn't you?
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> MS. TALLEY: I wanted to hear it.
>
> MR. GILL: And you were not given those guarantees in early March were you?
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> MS. TALLEY: Yeah. . . . Jeff Prange gave me the example about the job duties and those things. He said that the rates wouldn't be cut. They don't do that anymore.
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> MR. GILL: You were clearly concerned in early March that your rate was still going to be cut, weren't you?
>
> MS. TALLEY: I don't think you—Well, there must have been some concern there.

Talley's concern was obviously personal, and far deeper than she would have me believe. I am convinced that dating back to September 1989, she labored under fear that a downward adjustment was in the offing, and that her inquiries concerning a possible rate cut were sparked by something more tangible than either the offhand remark by Burhrandt or the rumors concerning the general pay system.[18]

On the critical issue of what Talley had been told concerning possible rate reduction, Production Manager Johnson testified that after agreeing to remove the locks, he informed the operators that the increased output capacity would be ''viewed.'' He adds that when they expressed concern as to a possible rate change, he informed them that he could not guarantee that the rates would remain the same. DeLeeuw confirmed that he told Baumgardt that their was no guarantee that the rates would not be adjusted. General Foreman Firgens testified that he specifically told Talley when the locks were removed that he could not guarantee that the rates would remain the same. Prange testified that when Talley inquired as to this issue, he advised that the rates were still under study, ''but that it was my feeling that if the rate was to be reduced, that it would be reduced only enough in order to compensate for the advantage the machine had given them by having the locks taken off.'' Apart from misgivings concerning Talley's credulity, it is entirely unlikely that any one manager, let alone several, would take an unqualified stance that incentives would not be cut. Here again, Talley was not believed.

4. Concluding analysis

The threshold issue is whether the General Counsel's prima facie case might survive Talley's misguided testimony. Her attempt at overstatement merely served to enforce my acceptance, generally, of the Respondent's position both that rates must be established and modified periodically to assure comparable opportunities for earnings between like jobs, and that the September 1989 removal of operating constraints from the XA machines, offered the alleged discriminatees a greater opportunity to enhance their earnings than was held by other XA operators.

Yet, these findings, themselves highly favorable to the defense, do not address the question of why the corrective action was timed to correspond with the union campaign. One explanation is offered by the the General Counsel; to wit: the rate revision was a ''hasty response'' triggered by the operators' overt declaration of union support. In my opinion, prima facie evidence warrants an inference that this was the case.

The General Counsel's cause is aided initially by the narrow focus of the 1990 reduction. Thus, only the earnings of Baumgardt and Talley were affected.[19] They just happened to be the only XA operators brandishing union insignia on their respective shifts. To make matters worse, it does not appear that any other operation was subject to a cut in rates then or at anytime since January 1986.

The adjustment itself was far from trivial. Since January 1989, a premium rate of .0040 applied to 6-inch slats, with

[16] In addition to Johnson and Prange, on cross-examination, Talley admitted to addressing the issue to General Foreman Roger Firgens, asking him: ''If we are all going to be cut?'' She attributes this inquiry to rumors circulating about a change in the pay system, including a possible conversion to a straight hourly system.

[17] Documentation establishes that slat rates were cut in each of the 3 years preceding 1986. With this in mind, it is noted that Talley testified that, in September 1989, when the locks were removed, she asked Mike Schilling—then personnel director, but no longer employed by the Respondent—whether the rates would be cut. Schilling allegedly told her that quality was the concern, and other than that he did not care how much they ran and how much money they made; i.e., ''the more we produce was better for the company and better for us.'' Talley testified that Schilling twice stated, ''that rates would never be cut again at Nu-Line.'' Baumgardt did not confirm this testimony. She stated that, to her knowledge, management did not discuss what would happen to the rates. While I believe that Talley made the inquiry, and was prompted by the same self-interest and concerns that actuated her to take similar steps in March 1990, I reject her testimony that she was told that there would be no reductions.

[18] It would not surprise me in the least if Talley, who initially did not support the Union, changed her mind because of concerns for a rate revision. She confirms that she did not begin to wear her button until a week or two after Baumgardt began wearing her union button. Baumgardt testified that she first wore a union button on March 22. She claims that she changed her mind about the Union when, on March 6, the setup rate applicable to nonproductive worktime was altered to a level beneath her average hourly earnings. In any event, I did not believe Talley's testimony, that during the second of several conversations with Talley in which she informed him of her change of heart concerning the Union, Tietyen said nothing, but walked off toward the office. Also rejected is her further testimony that, on her inquiry as to why he went to the office, Tietyen explained that Heimerl told him to report back on anything Talley said.

[19] The XA-2 on the third shift had no regular operator at the time of the change. Baumgardt testified that Terry DeLeeuw, the sister of Supervisor Tom DeLeeuw, at that time, was the third-shift operator. According to Baumgardt, DeLeeuw was replaced by Lorain Anchor when the rate was lowered. However, Heimerl explained that Terry DeLeeuw was a junior employee, who lacked established seniority and was moved from job to job. Anchor, a senior employee, had complained that DeLeeuw was running the XA-2, allowing her greater earning potential. It was decided to replace DeLeeuw with Anchor. Based on Heimerl's credited testimony, the timing of this action is considered neutral and is not among the factors contributing to an inference of unlawful discrimination.

all other lengths earning .0039. Management's action on April 6 eliminated the dual rates, substituting a single rate of .0030 per unit,[20] a reduction which at a minimum amounted to 23 percent. Indeed, the dramatic nature of this reversal is underscored by comparison of the .0036 and .0037 rates which were in effect in January 1986. Until the April 1990 change, these were the lowest manifested on this record. Finally, the cut was without precedent in recent years; it bucked the trend, for, at all times since January 1986, these rates had been on a consistent ascent.[21]

The timing of the reduction, shortly after Baumgardt and Talley brandished union insignia, also attracts attention. It represents a coincidence which itself is inflamed by a facial inconsistency with the Respondent's published practice of making such revisions in January. In this respect, one's curiousity is hardly allayed by the Respondent's assertion that the action in April, in the midst of the organization drive, was actually driven by an event taking place 6 months earlier.

In my opinion, these factors are sufficient to shift the burden to the Respondent to neutralize the inference of illegality. While it is entirely possible that an adjustment might have been appropriate at some time in the future, considering the inaction and willingness to accept earnings disparities over a number of months, the Respondent must persuade that April would have provided the setting for the revision even if the known union advocates had not engaged in activity protected by the Act.

This burden is hardly enhanced by the Respondent's testimony as to the methodology followed in arriving at the April 9 adjustment. In this regard, there is no quarrel with Heimerl's entirely plausible testimony that any incentive system must be administered with a sense of fairness to all similarly situated employees.[22] As a corollary, however, parity through rate revisions is achievable only if the adjustment process is faithful to logic and objectivity. Thus, changes of this kind inevitably disrupt the status quo, and employee discontent will be mitigated only if the foundation for the new earnings pattern is communicable in understandable terms.

In this instance, the Respondent's evidence leaves the clear impression that the 23-percent reduction sustained by Talley and Baumgardt was a byproduct of arbitrary action. First, there is no suggestion that this determination was pursuant to any single historic, mathematical formula. The Respondent concedes that it has never utilized engineering studies in support of rate changes. Instead, in 1990, the Respondent appears to have used a methodology so vague that management representatives who participated in the process failed to provide a clear definition of the underlying computation, leaving this record to stand devoid of any clear, consistent picture of the arithmetical considerations and data used in reckoning the .0030 rate.

Production Manager Johnson states that the April decision was made between himself, General Foreman Roger Firgens, and the human resources department. No attempt was made to reconstruct the formulation and data used in arriving at the .0030 rate, nor was there explanation for merger of the separate rates into a single rate. Johnson was the only witness examined as to the process. Initially, he testified that the rate was based on a comparison of 1989 earnings of XA machines other than XA-2,[23] with slat production earnings on the latter during January, February, and March 1990. However, he would complicate this formulation through subsequent testimony that units produced became a factor, because the rate was based on ''the average . . . capabilities of the other five machines.''[24] The concept was blurred to myopia when Johnson went on to explain that ''the wage ceiling has the biggest impact . . . . Output is a concern.'' In sum, as far as the April 9 revision is concerned, his testimony offers no basis for associating the result with any equation or measurable system of values.

Heimerl's definition of the objectives sought in maintaining an incentive system was simply expressed and easily understood. On the other hand, as was true of Johnson, his explanation of how this would be achieved was neither consistent nor enlightening. He testified that, over 25 years, rate adjustments had been made without benefit of an industrial engineer. He describes the Respondent's methodology and objectives in achieving pay equity as follows:

> [W]henever . . . a rate starts wandering either high or low, you immediately get complaints from the floor by . . . employees. We try to keep it relatively close. I guess there is no magic number. You take into . . . account the dollars to be earned and the pieces to be manufactured. So virtually speaking we try to keep it in a 50 cent range if it is at all possible, of the overall average for that same type of job.[25]

While the overall average of the same type job might be ascertainable, interaction between earnings and ''pieces to be manufactured'' in any formula used in this process is left to imagination. Management apparently played the revision issue by ear, having no fixed equation for computing rates.

As for his precise involvement, Heimerl asserts that he decided that .003 was too low and he raised it on April 20 because it took into account only the slat operations, when in fact Baumgardt and Talley were doing other things as well.[26] He testified that he made his computations alone, after his secretary summarized the timecards of Baumgardt and Talley, comparing slat earnings against the departmental av-

[20] Insofar as disclosed on this record, never before had there been a single rate for the slat operation.

[21] Earlier, however, between 1983 and 1986, these rates did not increase, but basically, were on annual declining curve. R. Exh. 2.

[22] An equitable incentive system would allow parity in earnings potential to all whose operations involve similar dexterity, skill, and energy. This test would be offended by rates which preclude a higher level of earnings, irrespective of how hard the operator might work.

[23] Johnson testified that there is a record of how much every XA machine operator makes, and though urged by me to produce this documentation, it was never produced. It was also my impression that the Company does not *routinely* compile summaries reflecting the average earnings of XA operators on an individual basis. Indeed, no such data was prepared for this litigation. Needless to say, this record is devoid of such documentation.

[24] Johnson offered no indication as to just how the ''capabilities'' of the five other machines were measured. He does not describe any documentation consulted in this connection, nor is there indication in the record that data of this kind was ever available in any form. Moreover, if productivity rates had been weighted into an overall equation, the precise formula involved could have been defined on the record.

[25] While evaluating comparative rates between jobs which embrace a multitude of distinct functions, can one conclude that job content is effectively the same without a motion study.

[26] The record indicates that Heimerl's involvement in the readjustment process was limited to the rollback of the .0030 rate, not its promulgation. It is important to note that Heimerl fails to explain the mathematical calculations or data that supported the incremental figure that he adopted to compensate the employees for the nonslat work.

erage.[27] On cross-examination, Heimerl adds that his determination also took into consideration ''the other rates on the other XA machines . . . [a]nd the pieces per minute, primarily, that could be done.''[28] Heimerl at no time explained how the diverse comparative data was correlated before used against the earnings of Baumgardt and Talley, nor does he identify the source of the rate/output data, how it was compiled, or whether it previously existed. Certainly, no documentation was offered in this area.[29]

In sum, the testimony throws little tangible light on the method followed in reckoning the single consolidated .0030 rate. Apparently made without benefit of a routine, historically applied equation, soon thereafter, correction was required. Moreover, no clear, consistent picture is presented as to just what records were consulted, if any, in assessing *individual* average earnings of other XA operators. Indeed, I am uncertain as to whether such records even existed. Though prodded by me to produce such documentation, after being told that it existed, no statistical summaries of this kind were never offered. Instead, the focus of the computation, shifted, with Heimerl's subsequent testimony that *departmental* averages were the key to readjustment of the rates.[30] In this light, one might assume that the pertinent, available data would not, at least as of April 9, have buttressed the Respondent's position that an adjustment was warranted at that time. See, e.g., *Advance Transportation Co*., 299 NLRB 900 (1990). Thus, a deficiency in the proof exists which lends a measure of support to the General Counsel's charge that rate reduction was ''a hasty response to the Union activity.''

This assessment is bolstered by the failure of the defense to offer a believable explanation as to why the rate adjustment was deferred for more than 6 months and not entertained until the union campaign was in full gear. In this respect, Johnson insists that the April adjustments were consistent with company practice. He relates that the most appropriate time to adjust a rate is after a history has been established, enabling an assessment of the machine's capacity for quality production and earnings so as to permit comparison with other machines. He testified that, after the September 1989 lock removal, in consequence of the unfettered operational capacity of the XA-2, it was discovered in November or December that operators on that unit earned disproportionately higher rates than other XA operators who performed no less complicated tasks.[31] Obviously, however, this discovery did not produce a recision under the Respondent's published criteria. Thus, the Company's employee manual states:

> A review of wages is made at the beginning of each year and any adjustments indicated by the review will be made at this time.

Johnson and Heimerl explain, however, that action was deferred in January because the earnings of Baumgardt and Talley had not plateaued, but were still escalating. Johnson attempted to explain that deferral until earnings stabilize has the salutary effect of preventing a premature assessment, thus, avoiding additional corrective rate changes.[32] In short, the Respondent asks that I believe that, in January, the operators' earnings had not reached a ceiling, causing management to freeze the XA-2 rates in the interest of further study.

If acceptable in terms of January's inaction, this testimony fails to reach the critical issue as to why April. In this latter connection, there is no testimony whatever, as to how, why, when, or on what basis a determination was made that the earnings of Baumgardt and Talley had leveled off at that point. In fact, the figures available to the Respondent as of April 1990 do not substantiate that this was the case. Thus, during the critical timeframe, the average earnings of Talley and Baumgardt are summarized below:

Prelock Removal

Yr./Qtr.	*Talley*	*Baumgardt*
1989		
1st	$9.02	$8.79
2d	9.55	9.39
3d	9.53	9.25
	Postlock Removal	
4th	10.03	9.98
1990		
1st	10.15	10.78

From this, it is evident that Baumgardt averaged $9.98 during the fourth quarter of 1989—this, the first quarter after the locks were removed, reflected only a 7.8-percent increase. However, her average earnings ascended to $10.78, an 8-percent increase, during the quarter ending March 31, 1990. Against this background, one might more readily conclude that in her case, as of April 6, her earnings continued on a radically steep ascent. Although Talley did not show the same upward curve, Baumgardt's continuing advance, stand-

[27] Heimerl's competence to evaluate the timecards was brought into question, on cross-examination, when he professed to a lack of familiarity with the functional code entries, being unable to discern whether or not they referenced slat operations.

[28] Consistent with this criteria, Heimerl did not advert to ''departmental averages'' during earlier testimony suggesting that the focus was on groupings more individualized. At that time he related:

> We take four or five different operators, we look at the possibility of the average production they can do, realizing that you are going to have highs, lows in there. And so then we average the job.

Obviously, the ''departmental averages'' would not establish an overall production average for similar jobs.

[29] My reservations concerning Heimerl's testimony that he utilized the departmental averages in readjusting the rates is based on more than this inconsistency. The Respondent describes these summaries (R. Exhs. 3(a) and (b)) as indicative of ''the average rate of machine operators in the precut department.'' However, it is important, first, to recognize that the figures are combined and not individual, and, hence, do not differentiate between the XA-2 and other machines. More importantly, prior to their admission, the General Counsel used these documents—then marked G.C. Exhs. 14(a) and (b)—in cross-examining Johnson. The latter testified, with encouragement from the Respondent's counsel, that this data was irrelevant since the averages were departmental and, for that reason, did not reflect the relationship between the XA-2 operators and those on the other five machines.

[30] Johnson testified that company records revealed the earnings of all XA operators. This data would be the only fair measure of the appropriate slat rate on the XA-2. No comprehensive figures pertaining to the other five XA machines and their operators were introduced.

[31] Johnson testified that rates on the six XA machines were not on a constant annual rise. He averred that said rates had been reduced in the past in order to keep earnings in line with those of operators on other machines engaged in the same type of production. Documentation does not disclose that this had taken place at any time since 1986.

[32] This testimony is hardly of comfort to the Respondent. Thus, the first adjustment made in April was subsequently reconsidered, and then supplanted by a new, higher rate. By logical extension of Johnson's reasoning the raise announced on April 6 would have been either ill timed or inappropriately considered.

ing alone, reflected an ongoing imbalance in earnings potential.

In addition, Talley's earnings experience casts a shadow on the Respondent's claim that April presented the appropriate opportunity to achieve parity between operator earnings. For, if that were the true objective, it would seem that an adjustment would have been necessary much earlier. Thus, during the three quarters of 1989 when the XA-2 was constrained, Talley's average earnings grew by a whopping 10.3 percent. (See R. Exh. 5.) No effort was made to adjust rates based on enhanced earnings during this period. Yet, the removal of the locks in September 1989, the factor which according to the Respondent, foretold the April adjustment, reflected a proportionately lower increase in her productivity. Thus, between October 1, 1989, and March 31, 1990, after removal of the locks, and during a period of heightened demand for productivity, her average earnings grew at a lesser 6.5 percent rate. In fact, after the April adjustment, using the second quarter of 1990 as the barometer, Talley fell below what she earned during the third quarter of 1989—the last in which the locks were in place—by a substantial 7 percent. (R. Exh. 4.) Finally, while the departmental average earnings increased during the first two quarters of 1990,[33] Talley's personal average fell by 11.5 percent.

These questions emerge from a proceeding in which the Respondent had every opportunity to present the documentation requisite to any fair calculation of this significany rate adjustment.[34] That which was offered was materially incomplete or pointed in an opposite direction. The omissions deny foundation for any reasoned conclusion that management possessed evidence that slat earnings had reached a plateau in April, a void compounded by its own proof, at least in the case of Baumgardt, that such earnings continued to escalate in that timeframe. Finally, the credibility of the Respondent's action is rendered suspect by data suggesting that the need to establish pay equity was just as propitious in January, the traditional month for incentive revisions, as April, when the Union drive was in full swing. Considering the omissions and contradictions in the Respondent's proof, the subjective denials that union activity was an influential factor are substantially less persuasive than the inference that the April adjustment was nonscientific, whimsical, and arbitrary because a hastily conceived reprisal. Accordingly, the Respondent has not demonstrated by credible proof that it would have taken the same action if Baumgardt and Talley had not engaged in union activity, and, hence, it is concluded that the Respondent violated Section 8(a)(3) and (1) of the Act by modifying their rates at that time.

[33] Heimerl's attempt to explain this by reference to a freeze in certain rates dating back to July 1989, tends to suggest that the departmental increase may not have been attributable to greater productivity. This observation does not diminish the impact of growth in departmental earnings on pay comparability and the equity between rates.

[34] The timing is not explainable under Respondent's evidence that employees had complained about the level of earnings on the XA-2. While I have no doubt that such reports were received, no attempt is made to isolate their timing to periods relevant to the rate adjustments. Thus, Johnson avers that he received reports from Firgens that two operators engaged in the same type work as Baumgardt and Talley had complained that ''they didn't have the opportunity to make the same money doing the game job.'' However, neither he, nor Firgens, testified as to when they learned of this dissatisfaction. Heimerl testified that, in January, he received an employee inquiry through the management hotline as to why the rate and earnings on the XA-2 was so high compared to all others in the department operating XA machines. Apart from general expressions of concern in 1989, this was the sole complaint that ever case to Heimerl's attention. In response, he checked the rates, only to be told that actual production on the XA-2 was still being monitored. He apparently did nothing further.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By on April 9, 1990, reducing the incentive rates of Marilyn P. Baumgardt and Barbara A. Talley in reprisal for their union activity, the Respondent has violated Section 8(a)(3) and (1) of the Act.

4. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it shall be recommended that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having discriminatorily reduced the incentive rates of employees Baumgardt and Talley, the Respondent shall be ordered to restore those in effect prior to April 9, 1990, and make them whole for any loss of earnings they may have sustained by reason of the discrimination against them, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[35]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

The Respondent, Nu-Line Industries, Inc., Suring, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging union membership by reducing incentive rates, or in any other manner discriminating with respect to wages, hours, or other terms and conditions, or tenure of employment.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the incentive rates enjoyed by Marilyn P. Baumgardt and Barbara A. Talley, as they existed prior to

[35] This remedy ought not be construed as endorsing any notion that the incentives existing prior to April 9 constitute an immutable floor on the discriminatees' rates. The instant unfair labor practice finding does not ignore the need for balanced earning opportunities under any incentive system, nor does it deny the possibility that achievement of that goal may periodically require downward rate revisions. Instead, the premise for the unlawful conduct lies exclusively in the fact that the Respondent took action at an inappropriate time, thus, failing to counter the inference that it acted on proscribed considerations. Accordingly, the Respondent should not be foreclosed, during compliance stages, from limiting its backpay obligation, through clear, convincing proof that the preservation of a fair incentive system required that XA-2 slat rates be cut at some time in the future on grounds bearing no relationship to union activity. See, e.g., *Blue Square II*, 293 NLRB 29 fn. 2 (1989).

[36] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

April 9, 1990, and make them whole for earnings lost as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Suring, Wisconsin, copies of the attached notice marked ''Appendix.''[37] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[37] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT discourage union membership by reducing incentive rates, or in any other manner discriminating against our employees with respect to wages, hours, or other terms and conditions, or tenure of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights set forth at the top of this notice.

WE WILL restore the incentive rates enjoyed by Marilyn P. Baumgardt and Barbara A. Talley, as they existed prior to April 9, 1990, and make them whole for earnings lost as a result of the discrimination against them, with interest, in the manner set forth in the decision of the administrative law judge.

NU-LINE INDUSTRIES